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FISCAL IMPACT STATEMENT

LS 6121

BILL NUMBER: HB 1017

NOTE PREPARED: Mar 5, 2004

BILL AMENDED: Mar 4, 2004

SUBJECT: Various Environmental Matters.

FIRST AUTHOR: Rep. Grubb

BILL STATUS: Enrolled

FIRST SPONSOR: Sen. Gard

FUNDS AFFECTED: X GENERAL
 X DEDICATED
 X FEDERAL

IMPACT: State & Local

Summary of Legislation: *Underground Storage Tank Fee Penalties:* The bill prohibits a penalty from being assessed against the owner of an underground storage tank for any failure to pay an annual registration fee in connection with the tank due before January 1, 2004, if the owner registered the tank before January 1, 2004.

Confined Feeding Operations: This bill provides that obtaining a National Pollutant Discharge Elimination System (NPDES) permit for a concentrated animal feeding operation (CAFO) meets the approval requirements of IC 13-18-10-1 and 327 IAC 16. It establishes fees to be remitted to the Indiana Department of Environmental Management (IDEM) for general and individual NPDES permits for CAFOs.

Groundwater Standards for Onsite Sewage Systems: The bill prohibits adoption of a rule by the state Department of Health (ISDH) if the proposed rule applies to onsite sewage systems the nitrate and nitrite numeric criteria included in groundwater quality standards adopted by the Water Pollution Control Board. This bill voids any rule adopted by ISDH to the extent that the rule is adopted for that purpose. It requires IDEM and the ISDH to jointly prepare a report concerning onsite sewage systems and nitrates and nitrites in groundwater.

Regulation of Endangered Industries: The bill also extends to July 1, 2006, the prohibition against adoption of a new rule by an environmental rulemaking board or adoption of a new policy by IDEM if the new rule or policy would require certain industries to comply with standards of conduct that exceed federal standards. It also excepts from the prohibition the adoption of a new rule by the Air Pollution Control Board that is necessary to attain or maintain certain air quality standards.

Effective Date: Upon Passage; July 1, 2004.

Explanation of State Expenditures: *Confined Feeding Operations:* This provision allows a person wishing to construct a confined animal feeding operation to apply for a National Pollutant Discharge Elimination System permit in order to satisfy the Department of Environmental Management's approval to start the construction. There should not be a significant difference in resources required between administering an NPDES permit program for some CAFOs relative to the existing state statutory confined feeding operation approval system and the proposal.

Groundwater Standards for Onsite Sewage Systems: This provision requires the ISDH and IDEM to jointly prepare a report regarding onsite sewage systems and nitrates and nitrites. The report shall be submitted by January 1, 2009.

Indiana State Department of Health: The ISDH reports that this provision would not have an immediate fiscal impact. The report consists of two parts. The first part is a review of literature and recent research. The ISDH indicates that reviewing literature is a current activity of the Department. Furthermore, the ISDH could absorb the costs of reviewing literature in preparation of the report. The second part of the report requires the agencies to determine the impact of requiring the nitrate standards. The ISDH indicates that there would be a delayed fiscal impact that would occur between 2006 and 2008 for this part of the bill. The determination of impact would likely require technical expertise in the determination of the extent of soil infiltration and contamination. The ISDH does not have that expertise and will likely require outside assistance in this evaluation. This part of the study will likely occur between 2006 and 2008 and will have a possible fiscal impact during that period.

Indiana Department of Environmental Management: The IDEM reports that it would pursue 319 grant money from the United States Environmental Protection Agency to fulfill its part of the expenditures for the report. A 319 grant is for nonpoint source projects. The grant requires a 40% state match, which can be provided by in-kind services. The IDEM indicates that it would redirect existing staff for the project if 319 grant money is not made available.

See *Explanation of Local Expenditures* for the fiscal impact as it relates to the onsite sewage system ground water quality standards.

Regulation of Endangered Industries: This provision extends the length of time the Air Pollution Control Board, Water Pollution Control Board, and Solid Waste Management Board are prohibited from adopting a new rule and the Department of Environmental Management from adopting a new policy until July 1, 2006. It affects new rules to be adopted by these boards or policies to be adopted by the Department that would require certain industries to comply with standards of conduct that exceed federal standards. However, the provision provides an exception to this requirement so that certain rules may be passed by the Air Pollution Control Board in order to attain or maintain national ambient air quality standards as part of an implementation plan required by the United States Environmental Protection Agency.

This provision would have an indeterminable fiscal impact, which depends on the nature of rules or policies that would have been adopted.

Explanation of State Revenues: *Underground Storage Tank Fee Penalties:* According to current statute, the Department of Environmental Management requires owners of underground storage tanks (USTs) to annually register each tank and pay a registration fee. If that fee is not paid, the Department may assess up to a \$2,000 penalty for each year the fee is past due. This provision keeps the Department from assessing a penalty against UST owners who registered their tanks by January 1, 2004, but originally failed to register or pay the registration fee. The Department estimates it will lose approximately \$36,000 in penalty fees due

to this provision, however, it also reports that refunding the penalties will not impact the Department as it does not rely on the funds to support its programs.

Background - The Department distributes the penalty revenue between three funds: Hazardous Substances Response Trust Fund, Underground Petroleum Storage Tank Excess Liability Trust Fund (ELTF), and Underground Petroleum Storage Tank Trust Fund. For storage tanks holding petroleum, the penalty revenue is split in half between the ELTF and Underground Petroleum Storage Tank Trust Fund; for tanks holding regulated substances other than petroleum, penalty revenue is deposited in the Hazardous Substances Response Trust Fund.

Confined Feeding Operations - The provision establishes a \$100 fee for filing or renewing a notice of intent concerning a **general** NPDES permit regarding a CAFO with the Department. This fee is in addition to the \$50 NPDES application and renewal fees currently in statute.

The Department estimates that an average of 30 new farms apply for CAFO approval per year, of which most apply for the general permit. Because the Department currently charges a \$100 fee (as set in administrative rules) for new or expanding confined feeding operations, which the farms would otherwise be required to pay, the NPDES permit fee related to CAFOs would not generate any additional revenue.

A general NPDES permit is valid for five years. For the 239 existing CAFO farms, the \$100 fee would generate \$23,900 every five years. For approximately 211 farms that may be required to pay the fee starting in 2006, the fee would generate an additional \$21,100.

A \$250 fee is also created for filing an application concerning an **individual** NPDES permit as related to a CAFO. This fee is in addition to the \$50 individual NPDES application and renewal fees currently in statute. This fee should have a minimal fiscal impact as most farms seeking CAFO approval will apply for the general NPDES permit rather than the individual permit.

An individual NPDES permit is also valid for five years. For the 41 farms that would be affected by this fee, the additional revenue generated every five years would be approximately \$10,250.

The average revenue-generating potential of the general and individual NPDES fees relating to CAFOs could be approximately \$6,830 in any given year up to year 2006. Revenue generated from these fees will be deposited in the Environmental Management Permit Operation Fund.

Explanation of Local Expenditures: *Groundwater Standards for Onsite Sewage Systems:* This provision would eliminate the compliance and monitoring costs to state and local governments that would have been associated with the onsite sewage disposal rules created by the executive board of the State Department of Health under 410 IAC 6-8.2-55. This proposed rule would require local health departments to monitor secondary septic systems. If the rule was implemented, which this bill prevents, local health departments would have likely required additional staff to implement the requirement and expenditures would likely have increased for departments as a result. Expenditure increases due to the rule would have varied by locality and would be dependent on the number of new permits annually which required secondary septic systems. In addition, government entities would have seen increases in expenditures if new facility construction were located in one of the specified counties where a secondary septic system is required. Prohibiting implementation of 410 IAC 6-8.2-55 will result in these costs being avoided.

Background: Rule 410 IAC 6-8.2-55 would have required that new construction in certain areas of the state include a secondary treatment system for the removal of nitrate from the wastewater. Approximately

44 counties would have been affected.

Three manufacturers currently produce systems that were anticipated to be used: (1) Earthtek, (2) Orenco, and (3) Zoeller systems. Costs of secondary treatment systems vary according to capacity. An Earthtek system for a three-bedroom house costs between \$6,500 and \$11,500 installed. Commercial secondary treatment costs vary depending upon industry type and facility size. Estimates for commercial applications ranged from \$10,000 to hundreds of thousands of dollars. In addition, both residential and commercial systems require continuous monitoring and maintenance. Estimated cost per unit for monitoring and maintenance was approximately \$300 for residential and \$400 to thousands of dollars for commercial. Total annual costs may decrease in the future due to technical advances and decreasing manufacturing costs.

Local Departments of Health: This rule would have increased expenditures for local health departments. It would have required them to monitor whether new septic systems have appropriate maintenance contracts. This would have increased the number of active permits that local departments monitor. Local health departments may have required additional staff to monitor these systems.

The State Department of Health prepared estimates of the number of new permits each year that would require secondary treatment systems. The estimates are based upon the percentage of soils in a given county that meet the Department criteria for requiring secondary treatment. It is important to note that the Department analysis looked specifically at the percentage of soils meeting the set criteria and then multiplied this percentage by the number of new septic permits issued in 2001 for that county.

The Department did not use the number of permits issued in soils that meet the criteria specified in the new rule (this data is not readily available statewide). This may have increased the cost of this provision statewide. For example, a recent Purdue University research project plotted the location of all new septic permits in Elkhart County for a given year. This project found that 66% of all new septic permits issued in Elkhart County were in soils that do not meet the nitrate absorption requirements. However, this study did not apply the second criteria of the rule which requires that at least three soil borings be drilled at a proposed septic site. This factor may have reduced the study's percentage. The Department assumed that 24.93% of new permits would be affected in its analysis. Elkhart County averages 700 new construction permits annually. Between 175 and 462 of these would require a secondary septic system; a difference of 287 permits.

The number of permits requiring a secondary septic system is dependent on the percentage of soils in a given county that require a secondary septic system and the number of new construction permits applied for in the required areas. Furthermore, the percentage of permits necessitating a secondary septic system varies by county. An estimate of the actual number of permits in the state (or in any given county) that would have required a secondary septic system, and consequently monitoring by local health boards, is not feasible without additional data.

Based on the findings of Purdue University, Elkhart County estimated a need for two additional staff, one clerical and one professional, after the first year of implementation. Furthermore, the county estimated a need for one additional staff member every three to four years thereafter as the number of septic tanks requiring monitoring increased. Elkhart County estimated the cost for additional staff to be \$60,000 in year one and approximately \$40,000 to \$60,000 every two to three years thereafter. Costs would have varied by locality due to staffing cost and the number of septic tanks needing to be monitored. Currently, the Department does not have an estimate for additional expenditures to counties.

Governmental Entities: This rule may have increased new construction costs for governmental facilities. The construction costs would have increased if the new facility construction occurred in one of the

specified counties and required an onsite sewage system. The number of new government facilities impacted by the provisions of this rule is currently unknown and contingent upon administrative action. Cost to the state would have been dependent upon type and size of septic system required if other sewage treatment options were not readily accessible.

Explanation of Local Revenues:

State Agencies Affected: *Underground Storage Tank Fee Penalties* - IDEM.

Confined Feeding Operations - Department of Environmental Management.

Regulation of Endangered Industries - Air Pollution Control Board, Water Pollution Control Board, Solid Waste Management Board and the Department of Environmental Management.

Groundwater Standards for Onsite Sewage Systems - Department of Health.

Local Agencies Affected: *Groundwater Standards for Onsite Sewage Systems* - Local health departments; governmental entities.

Information Sources: *Underground Storage Tank Fee Penalties* - IDEM.

Confined Feeding Operations & Regulation of Endangered Industries - Wendy Hoffspiegel, Department of Environmental Management.

Groundwater Standards for Onsite Sewage Systems - Zach Cattell, Director of Legislative Affairs, Department of Health, 233-2170; Robert Watkins, Elkhart County Environmental Health Services, 574-875-3391; Brad Lee, Purdue University; 765-496-6884; Marlie Pedtke, Indiana Builders Association, 317-283-4266; Stuart Meade, Meade Septic Designs, 574-533-1470; Kevin Chafee, Earhtek Environmental Systems; 812-934-5035; Mike Robertson, Earhtek Environmental Systems, 812-934-5035; Joe Schaeffer, Midwest Tile and Concrete, 260-749-5173; John Crist, Hartford Concrete Products, 765-348-3506; Terry Herschberger, Indiana Builders Association, Septic Committee, 574-825-1579; Brod Boyer, PM & Associates, 317-849-0641; Scott Rexroth, PM & Associates, 317-849-0641; Tim Andrews, Press-Seal Gasket Corporation, 1-800-348-7325; Ronnie Boehm, Department of Natural Resources, 812-482-1171.

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